

# **Madison County, Indiana Board of Zoning Appeals**

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## **Rules & Procedures**

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# Rules and Procedures

## Preamble

WHEREAS, the Madison County, Indiana Board of Zoning Appeals is authorized and required by the IC 36-7-4-900 series to supervise and make rules for the filing of appeals of administrative decisions; the application for variances and special uses (special exceptions); the giving of public notice; the conducting of hearings; and the creation, form, recording, modification, enforcement, and termination of commitments; and

WHEREAS, the Madison County, Indiana Board of Zoning Appeals determined that its Rules and Procedures should be printed and organized in a coherent fashion and be made readily available to all applicants and the general public.

NOW, THEREFORE BE IT RESOLVED by the Madison County, Indiana Board of Zoning Appeals that the following Rules and Procedures be adopted:

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## Article One

# The Board of Zoning Appeals

### 1.1 Board Establishment and Function

The Madison County Board of Zoning Appeals (also referred to in these Rules and Procedures as the “Board”) shall be established and shall function consistently with all applicable provisions of Indiana law, specifically the IC 36-7-4-900 series, as periodically amended.

### 1.2 Board Name:

The name of the Board shall be the “Madison County, Indiana Board of Zoning Appeals”.

### 1.3 Board Seal:

The seal of the Board shall be the seal of Madison County, adopted by the Board of County Commissioners of Madison County, Indiana.

### 1.4 Board Office and Business Days

A. The office of the Board shall be the Madison County Plan Commission Office, located in the Madison County Government Center.

B. The office shall be open to the public on specific business days as specified by the Madison County Board of County Commissioners. For the purpose of these Rules and Procedures, “business day” shall refer to such days when the offices of the Board are open to the public for the transaction of business for the entire period of its normal operating hours, and shall exclude any day on which such offices are not open to the public for the transaction of business or any day when such offices are open for less than the normal operating hours.

### 1.5 Board Jurisdiction

The jurisdiction of the Board shall include all lands within Madison County, Indiana which are not incorporated as a separate municipality. Further, the Board shall not have jurisdiction to enforce any aspect of the Madison County Zoning Ordinance in any unincorporated area for which jurisdiction has been established by a municipality consistent with the requirements of Indiana law. In no case may the Board exercise jurisdiction over any property owned by the government of the United States of America or the State of Indiana.

### 1.6 Attorney

The attorney for the Madison County Plan Commission will also serve as the attorney for the Madison County Board of Zoning Appeals.

## Membership, Officers, and Staff

### 2.1 Membership

The Board shall consist of 5 members consistent with the provisions of IC 36-7-4-902. The terms of the Board members at the time of its initial establishment shall be consistent with the provisions on IC 36-7-4-906.

- A. After the initial establishment of the Board, each member shall serve a 4 year term, consistent with the provisions of Indiana law. The terms for all Board members shall expire on the first Monday in January of the appropriate year, based on their individual date of appointment and the requirements of Indiana law.
- B. There shall be no limit to the number of terms, including consecutive terms, which members may serve.
- C. Any member may be removed from the Board and replaced, consistent with any applicable provisions of Indiana law, by the entity which has appointed them. If removing a member prior to the expiration of his/her term, the appointing authority shall mail to them, at their residence, written notice stating the reasons for the removal. Any member who is removed may appeal the removal to the circuit or superior court of Madison County within 30 days of his/her removal.
- D. No member of the Board may hold any other elected or appointed office in Madison County or any state or municipal government with the exception of those which are specified in Indiana law as being necessary to qualify an individual for membership on the Board (such as membership on the Plan Commission per IC 36-7-902).
- E. A member must be a resident of the jurisdictional area of the Board.
- F. The appropriate appointing authority may appoint an alternate member of the Board to participate with the Board in any specific hearing or decision in which the regular Board member appointed by that authority has a conflict of interest as defined in section 3.6 of these Rules and Procedures.

### 2.2 Oath of Office:

Every newly appointed member of the Board shall subscribe to the following oath of office either in writing, or by making a statement on the record at a Board meeting, before entering into the performance of his/her duties:

“I, \_\_\_\_\_, do solemnly swear and affirm that I will support the Constitutions of the United States and the State of Indiana, and that I will faithfully and impartially discharge my duties as a member of the Madison County, Indiana Board of Zoning Appeals, according to applicable laws, and to the best of my ability.”

### 2.3 Election of Officers & Appointment of a Secretary:

At its first regular meeting each year, the Board shall elect from its members a Chairperson and a Vice-Chairperson.

- A. A person who receives a majority vote of the entire membership of the Board shall be declared elected and shall serve until a new person is declared elected at the annual election the following year. There shall be no limit to the number of terms, including consecutive terms, to which the Chairperson and Vice-chairperson may be elected.
- B. At the same meeting, the Board shall also appoint a Secretary, who is not required to be a member of the Board. The Secretary shall serve at the pleasure of the Board and shall be appointed and dismissed by a majority vote of the entire membership of the Board.

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# Membership, Officers, and Staff

(continued)

- C. The outgoing Chairperson shall oversee the annual process of electing officers and appointing a Secretary. Candidates for Chairperson, Vice-Chairperson, and Secretary shall be nominated by members of the Board. Each nomination must receive a second from another Board member in order for that candidate to be considered by the Board. Nominations and voting for each office shall occur in the following order: Chairperson, Vice-Chairperson, then Secretary. When it appears that all nominations for each individual office are complete, the Chairperson shall oversee a roll call vote for each candidate in the order in which they were nominated. No nominations for any other office shall be considered until the previously considered office has been filled.

## 2.4 Vacancies:

- A. The Board shall elect a Chairperson pro tempore from among its members if both the Chairperson and the Vice-Chairperson are temporarily absent or otherwise unable to fulfill their duties.
- B. If the office of Chairperson and Vice-Chairperson becomes permanently vacant (due to death, permanent disability, resignation, or other cause) the Board shall elect a replacement from its membership to complete the unexpired term at the next regular meeting.
- C. If a permanent vacancy occurs among the membership of the Board, the appointing authority shall appoint a new Board member to complete the unexpired term of the vacating member. In no instance shall the new member assume any office held by their predecessor unless they themselves are elected to such office by the Board consistent with these Rules and Procedures.
- D. If the Secretary is absent from any Board meeting, the Chairperson shall appoint a temporary Secretary to serve at that meeting. If the office of Secretary becomes permanently vacant the Board shall appoint a replacement at the next regular meeting.

## 2.5 Chairperson:

The Chairperson shall preside over all regular and special meetings of the Board in addition to executing the following duties:

- A. the Chairperson shall appoint the members of all necessary committees;
- B. the Chairperson shall rule on all points of procedure, subject to these Rules and Procedures, unless overruled by a majority vote of the Board;
- C. the Chairperson shall sign all official documents on behalf of the Board, or otherwise delegate this duty to the Secretary or Planning Director; and
- D. the Chairperson, with the Planning Director, shall be the spokesperson for all matters relevant to the Board. All press releases and similar public statements issued by the Board shall be provided by either the Chairperson or the Planning Director.

## 2.6 Vice- Chairperson:

The Vice-Chairperson shall act as Chairperson during the temporary absence or disability of the elected Chairperson. The Vice-Chairperson shall perform the duties imposed on the Chairperson until the Chairperson is able to resume his/her duties, or until the Board elects a new Chairperson.

## 2.7 Secretary

The Secretary shall oversee (1) the keeping of a complete and accurate record of all proceedings and votes of the Board, (2) the preservation of all papers and documents of the Board, and (3) the preparation and distribution of reports, ordinances and other material related to the Board's activities. The Secretary may be a member of the Board, the Planning Director, or another member of the Board's staff.

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# Membership, Officers, and Staff

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## 2.8 Staff:

The Planning Director and/or his/her assignee, and other employees of the Plan Commission shall serve as the Board staff, and shall provide technical and analytical assistance to the Board.

- A. The Planning Director shall conduct a complete and thorough investigation of all matters that come before the Board and may enlist, at his/her discretion, technical and professional assistance from engineers, architects and other consultants as required.
- B. The Planning Director shall supervise the Board's staff and administer the daily affairs of the Board. Those daily affairs may include, but are not limited to:
  - a. keeping a complete and accurate record of all proceedings and votes of the Board;
  - b. preparing an agenda for all Board meetings;
  - c. providing notice of meetings to Board members and the public;
  - d. arranging for all legal notices required for the business of the Board;
  - e. preparing, publishing, and distributing all reports, ordinances, and other material related to the activities of the Board;
  - f. recommending appointments to the Board;
  - g. interviewing prospective staff members;
  - h. establishing personnel policies and office procedures;
  - i. keeping in safe custody the seal of the Board and affixing the seal to all contracts, instruments, plats, and other documents when authorized by the Board; and
  - j. managing all funds appropriated to the Board by signing all purchase orders and claims, and seeing that monies are paid out in accordance with the adopted procedures of Madison County.
- C. The staff of the Board and the Secretary (if the Secretary is not a member of the Board) shall be hired, appointed, retained, promoted and discharged without regard to age, ancestry, disability, national origin, race, religion, sex, or sexual orientation.
- D. The officers, members, and staff of the Board shall perform such other duties and functions as may, from time to time, be required by the Board, these Rules and Procedures, or Indiana law.

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## Article Three

# Meetings

### 3.1 Regular Meetings:

The Board shall conduct regular meetings on the 4th Tuesday of each month at 9:00 a.m., local time, in the Commissioner's Court in the Madison County Government Center. If the date of a regular meeting falls on a legal holiday recognized by Madison County, or if it is impossible to conduct the meeting at that time or place, the Chairperson may set an alternative date, time or place for the regular meeting. The Chairperson may cancel the meeting with the consent of a majority of the Board members. Notice of the rescheduled, relocated, or canceled meeting shall be given as required by I.C. 36-7-4-920(b) and the meeting shall be subject to the Indiana Open Door Law.

### 3.2 Special Meetings:

Special meetings may be called by the Chairperson, upon written request to the Planning Director by 2 Board members, or as determined by a majority of the Board members at a regular meeting.

A. All members shall be notified in writing of the time and place of a special meeting by the Planning Director a minimum of 3 business days prior to the date of the special meeting. Written notice of a special meeting shall not be required if (1) the date, time, and place of a special meeting is fixed at a regular meeting and (2) all members of the Board are present at the regular meeting.

B. Only matters included in the call for a special meeting shall be considered at that meeting.

C. Public notice of the special meeting shall be given in the same manner as required for regular meetings.

### 3.3 Executive Sessions

The Board may meet in executive session consistent with the provisions of IC 5-14-1.5-6.1

### 3.4 Open Meetings and Public Hearings:

All meetings and public hearings of the Board, except executive sessions as described in section 3.3 above, shall be open to the public and petitioner(s), remonstrator(s), interested parties, and members of the general public desiring to witness the proceeding or be heard by the Board in accordance with these Rules and Procedures.

### 3.5 Quorum:

A quorum consists of a majority of the entire membership of the Board. No action of the Board is official unless approved by a quorum of the its members.

A. No action shall be taken, decision made, or opinion expressed by the Board unless a quorum of members are present at a properly scheduled and advertised regular or special meeting.

B. Nothing in this section shall be interpreted as prohibiting members of the Board from gathering at events, community happenings, or on other occasions for the purpose of socialization or the receipt of information not directly related to a matter of business pending before the Board.

### 3.6 Conflicts of Interest:

No member of the Board may participate in a hearing or decision of the Board concerning any matter in which he/she has a direct or indirect financial interest.

A. Any member with a conflict should notify the Planning Director, in writing, 3 business days prior to the hearing, and shall notify the other members of the Board prior to the beginning of any hearing on a matter that presents a conflict.

B. The notification shall be entered in the Board's records, and that member shall not sit as a member of the Board during the hearing of that matter nor participate as a member in the Board's discussion or decision.

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# Meetings

(continued)

- C. If an alternate member is used for the hearing of any petition, the name of the alternate and the appointing authority shall be entered into the Board's records.

## 3.7 Procedural Rules:

The most recent edition of *Robert's Rules of Order* shall govern the conduct of all meetings except to the extent that it conflicts with Indiana law and/or these Rules and Procedures.

## 3.8 Order and Courtesy:

The Chairperson or his/her designee shall preserve order and may warn any member or other person present that particular conduct is a breach of peace. If any person persists in such conduct following the warning, the Chairperson or designee may call a recess and request the assistance of local law enforcement to restore order as allowed by law.

## 3.9 Order of Business:

- A. The order of business at all **regular meetings** shall be:
  - a. call to order by the Chairperson;
  - b. roll call of the Board members, Secretary, and staff, and determination of a quorum;
  - c. consideration of the minutes of the previous meeting;
  - d. old business (any tabled or continued petitions or other items of business);
  - e. new business (all new petitions and business items);
  - f. communications (presentation of information by the Chairperson, any Board member, the Secretary, and/or the staff);
  - g. report(s) of officers, committees, and/or the staff; and
  - h. adjournment.
- B. The order of business for **special meetings** shall be:
  - a. call to order by the Chairperson;
  - b. roll call of the Board members, Secretary, and staff, and determination of a quorum;
  - c. the business for which the special meeting was called; and
  - d. adjournment.

## 3.10 Docketing and Agenda:

- A. The Planning Director shall docket all petitions and other matters for the consideration of the Board consistent with the procedures outlined in the Madison County Zoning Ordinance, applicable provisions of Indiana law, these Rules and Procedures, and any office policies which he/she has adopted.
- B. From the docket, the staff shall prepare an agenda for each meeting which meets the following requirements:
  - a. The agenda shall list all items to be considered by the Board at the regular or special meeting.
  - b. The items shall be listed on the agenda in the order in which the petition or other matter was docketed by the Planning Director.
  - c. The agenda shall either be sent by U.S. Mail or be hand-delivered to all members of the Board; each petitioner or his agent; and any person, party, or group which has filed a written request to receive the agenda for that calendar year.
  - d. The agenda shall be available for public inspection at the Board office no later than 5 business days before any regular meeting.
- C. At his/her discretion, the Planning Director may exclude any petition or other matter from the agenda consistent with the provisions of section 4.6 of these Rules and Procedures.



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# Meetings

(continued)

- D. No item shall be considered by the Board unless it appears on the agenda.
- E. By a majority vote, the Board may amend the agenda during the course of any meeting.

## **3.11 Voting**

All voting by the Board shall be in the form of either a roll call vote, or a voice vote. Generally a roll call vote shall be used in deciding all petitions. In any instances in which a voice vote is used, any member of the Board may make a motion requesting a roll call vote. Such roll call vote shall be taken if the motion receives a second from another member of the Board. When voting, the Chairperson shall always be the last Board member to vote.

## **3.12 Minutes and Record of Proceedings**

The Board's staff shall maintain minutes of all Board meetings. The minutes of each meeting shall be reviewed by the Board at its subsequent meeting. No minutes shall be considered official until they are approved by a majority vote of the Board and are signed by the Chairperson and the Secretary.

- A. At a minimum, the minutes shall include the names of the Board members in attendance, the names and addresses of the petitioners, their agents, and all other persons appearing before the Board, the docket number of all petitions heard, a description of each location which is subject to a petition or discussion, a summary of all discussion, and a record of all votes taken (including the names of the Board members making and supporting all motions, the record of all roll call votes, and a listing of any conditions specified by the Board and/or commitments made by any petitioner).
- B. The Planning Director shall keep a file for each petition or other matter heard by the Board. The file shall include all forms, correspondence, drawings, public notices, and other materials related to the matter.
- C. All minutes and records of the proceedings of the Board shall be kept in the Board's office and shall be accessible to Board members and the public during normal business hours.

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## Article Four

# Petitions

### 4.1 Applications:

Every petitioner shall complete an application obtained from the Planning Director. All submitted materials shall be consistent with the applicable provisions of the Madison County Zoning Ordinance, Indiana law, these Rules and Procedures, and the adopted office policies of the Planning Director. The petitioner may be required by the Planning Director or the Board to submit any additional information deemed relevant for the consideration of the petition.

### 4.2 Filing Calendar:

Every petition shall be filed with the Board consistent with the adopted Calendar of Meeting and Filing Dates.

### 4.3 Required Forms and Documents:

All applications, requests for plat approval, notices, affidavits, certificates, endorsements and instruments, and other documents submitted to the Board must be consistent with the forms established and office policies adopted by the Planning Director and the applicable requirements of the Madison County Zoning Ordinance.

### 4.4 Fees

All applications and petitions shall be accompanied by the appropriate fees as specified on the adopted Fee Schedule.

### 4.5 Specified Requests

All petitioners shall be required to specify the appeal(s), variance(s), and/or special use(s) being requested on the appropriate applications. Such requests shall include a citation of the specific provision of the Madison County Zoning Ordinance which is being appealed, from which a variance is sought, or which lists the special use. Any requests which are not specifically listed on the appropriate application forms, even if indicated on proposed plans or other documents, shall not be considered as part of the request presented to the Board.

### 4.6 Docket and Agenda

No petition shall be docketed, and therefore shall not be placed on the agenda for a Board hearing unless all fees have been paid, all required forms have been submitted, and all materials are deemed to be consistent with the Madison County Zoning Ordinance, Indiana law, these Rules and Procedures, and the adopted office policies of the Planning Director. All petitions which are properly filed shall be docketed for the appropriate meeting of the Board.

## Public Hearings

### 5.1 Hearings:

The Board may conduct a public hearing as a part of any regular or special meeting if the public notice required by State law, these Rules and Procedures, and the applicable provisions of the Madison County Zoning Ordinance is provided.

- A. A public hearing is any proceeding involving the consideration of a variance, a special use approval, or an appeal of an administrative decision.
- B. The conduct of the public hearings shall be governed by the following:
  - a. To the extent necessary for full disclosure of all relevant facts and issues, the Board shall provide all parties and any interested persons the opportunity to present evidence and argument, respond, and submit rebuttal evidence, except as restricted by these Rules and Procedures.
  - b. The Chairperson or his/her designee may administer oaths and rule on any offer of proof or evidence.
- C. All public hearings shall be recorded at the Board's expense. The Board is not required, at its expense, to prepare a transcript, unless required to do so by law. Any person, at the person's expense, may cause a reporter approved by the Board to prepare a transcript from the Board's record, or cause additional recordings to be made during the hearing as long as the additional recording does not cause a distraction or disruption in the opinion of the Chairperson.

### 5.2 Notice Requirements:

For all public hearings, the petitioner shall provide notice to the public consistent with the requirements of this section and the applicable requirements of the Madison County Zoning Ordinance. Required public notice shall include the following:

- A. The petitioner shall allow the staff to post on the subject property a sign giving notice of the hearing. The sign shall remain on the property until the final decision on the request is made by the Board.
- B. The Petitioner shall prepare a legal notice consistent with the requirements of IC 5-3-1 for publication in a qualifying newspaper of general circulation. The legal notice shall appear in the newspaper no less than 1 time at least 10 days prior to the date of the public hearing. Legal notices shall include the following information:
  - a. the general location of the subject property and a legal description of the land which is included in the petition;
  - b. the street or common address of the real estate;
  - c. that the project plans are available for examination at the office of the Madison County Plan Commission;
  - d. that a public hearing will be held giving the date, place, and hour of the hearing; and
  - e. that written comments on the petition will be accepted prior to the public hearing and may be submitted to the Planning Director.
- C. The petitioner shall prepare and distribute written notice of the public hearing to all property owners within 2 ownerships or 500 feet of the boundaries of the subject property, whichever is less.
  - a. The notice shall contain the same information as the legal notice which is published in the newspaper as outlined in section 5.2(B) above.
  - b. The distribution and cost of the notice shall be the responsibility of the petitioner.

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# Public Hearings

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- c. The petitioner shall obtain the names and mailing addresses of those to be notified from the Property Transfer Books contained in the Madison County Auditor's Office. The names and addresses of these property owners shall be submitted to the Planning Director at the time the petition is filed.
- d. The notices shall be sent to each property owner at least 1 time, and must be postmarked a minimum of at least 10 days before the date of the public hearing. The mailing shall be via Certified Mail through the United States Postal Service. No other form of mailing shall be accepted.

## **5.3 Determination of Adjoining Property Owners:**

- A. In no case shall streams, rivers, roads or other built or natural features be interpreted as being boundaries for notification if they separate the subject property from the property of those owners specified in section 5.2(C) for the receipt of notice.
- B. For the purpose of these notice requirements, where any such adjacent parcels of land are owned by the petitioner, the subject property shall be deemed to include all of the petitioner's contiguous holdings.
- C. In the case of property which has been submitted to the Horizontal Property Law (I.C. 36-1-6), each condominium unit shall be deemed one property ownership and the common area designated in the appropriate condominium instruments shall be deemed one property ownership, and notice required to be given to the co-owners of such common area may be given to the association of co-owners set forth in condominium instruments recorded in the office of the Recorder of Madison County, Indiana.
- D. For the purpose of determining the names and addresses of legal title owners, the records in the office of the Madison County Auditor which list the current owner of record at the time the notice shall be sent shall be deemed to be the true names and addresses of persons entitled to notice. If notice is sent to such persons for the purposes of the public hearing before the Board, such notice shall be deemed proper.

## **5.4 Affidavit of Notice:**

A copy of the materials provided to each property owner, and a signed and notarized Affidavit of Notice certifying the correctness of the mailing list shall be provided to the Planning Director by the petitioner a minimum of 5 business days prior to the date of the public hearing.

## **5.5 Defective Notice:**

If proper notice has not been given, the Board shall continue the petition until the next regularly scheduled meeting to allow time for un-notified and/or improperly notified persons to prepare for the hearing. Personal appearances by those who were not properly notified shall waive any defect in notice, unless good cause is shown that the defect limited their ability to prepare for the public hearing.

## **5.6 Communication with Board Members and County Departments:**

- A. No person may communicate with any member of the Board with the intent to influence the member's action on a matter pending before the Board. However, not less than 5 business days before the hearing, the staff shall provide each Board member with a written case report describing the relevant facts of all matters. Copies of relevant materials provided by the petitioner, remonstrators, or other interested parties shall be included in the case report. The staff's report may also include a written recommendation for Board action to be taken on any pending matter. Staff case reports shall also be made available to the public a minimum of 5 business days prior to

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# Public Hearings

(continued)

the hearing.

## 5.7 Visual Inspection:

Board members should make a reasonable effort to visually inspect properties for which petitions have been filed.

## 5.8 Appearances:

Appearances by petitioners at public hearings shall be required consistent with the procedures outlined in the Madison County Zoning Ordinance. The petitioner and/or their agent or counsel must appear and present each petition in order for the Board to consider the request.

- A. If no person appears on behalf of a petition, the petition may be tabled until the following regularly scheduled meeting or be dismissed at the discretion of the Board.
- B. Remonstrators and other interested parties may appear at the meeting and make a verbal presentation, or they may submit written comments to the Planning Director. Any written comments filed with the Planning Director before the hearing shall be considered by the Board, and shall be made a part of the record of the hearing without requiring the appearance of the author. All written comments must include the author's signature, printed name, address and telephone number in order to be considered by the Board.

## 5.9 Continuances:

All continuances for public hearings on petitions shall be subject to the following:

- A. Continuances may be requested by the petitioner, a remonstrator, an interested party, the Board, or the Board's staff as specified below:
  - a. The Board may, at any time and at its own discretion, continue the hearing of any petition at any time during a public hearing prior to a vote being taken on the matter. The Board shall specify a date to which the matter shall be continued.
  - b. The Board's staff may request a continuance not to exceed 60 days in which to further review the petition. The staff may request a continuance at any time during the hearing of any petition, prior to a vote being taken on the matter.
  - c. An interested party may request a continuance not to exceed 60 days. The request shall include the reasons for the request, and shall be either presented in writing to the Planning Director prior to the date of the hearing or verbally during the time specified for interested party comments during the hearing.
  - d. Petitioner(s) or remonstrator(s) may request a continuance to a certain date. The request shall include the reasons for the request, and shall be either presented in writing to the Planning Director prior to the date of the hearing or verbally during the time specified for petitioner/remonstrator comments during the hearing.
- B. Requests for continuance shall generally be approved if good cause is demonstrated by the party requesting the continuance. If approving the continuance, the Board shall specify a date to which the matter shall be continued.
- C. The Board may determine if re-notification of adjoining property owners shall be required if a petition is continued at a hearing for which proper notice was given by the petitioner in compliance with the applicable notice requirements. However, any continuance which is granted for a time period in excess of 60 days shall require re-notification consistent with the provisions of these Rules and Procedures and the applicable requirements of the Madison County Zoning Ordinance.
- D. Petitions shall be dismissed after 180 days of inaction unless good cause is shown.

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# Public Hearings

(continued)

- E. Generally, any party requesting a continuance should notify the Planning Director of the request prior to the date of the public hearing on the matter. The Planning Director shall inform the Board Chairperson of all such requests prior to the start of the meeting. The Chairperson may seek the approval of the Board to alter the agenda in order to hear all requests for continuance prior to any other business in order to expedite the meeting.

## 5.10 Amendments to a Petition:

Requests to amend a petition may be filed with the Planning Director in writing prior to the start of any public hearing, or be made orally at the hearing during the petitioner's presentation.

- A. Any remonstrators or interested parties present shall have the right to be heard on any objections they may have to a proposed amendment.
- B. It shall be within the discretion of the Board to grant or deny any requests for amendments and to require re-notification in compliance with these Rules and Procedures. Any proposed amendment which includes an additional appeal, variance, or special use or involves the a greater deviation from the Madison County Zoning Ordinance requirements shall be required to take the form of a new petition and shall meet all of the filing, notification, and other applicable requirements of these Rules and Procedures.

## 5.11 Presentations:

Public Hearings before the Board shall proceed in the following manner:

- A. To maintain proper order, each petitioner, remonstrator, and interested party shall make their presentations without interruption by any other party. All speakers shall approach the podium when the time for their presentation is announced by the Chairperson. They shall state their name and address for the purposes of the record prior to their presentation, shall be recognized by the Chairperson prior to speaking, and shall address all comments to the Board.
- B. All public hearings shall proceed based on the following order of events:
  - a. the Chairperson shall announce the petition as listed on the agenda and the affected area shall be located on a map of Madison County;
  - b. the staff shall present the case report describing the facts of the petition and verify for the Board whether or not adequate public notice has been provided (petitions for which adequate public notice has not been provided shall be automatically continued until the next Board meeting and proper notice for that meeting shall be required);
  - c. the petitioner shall present facts relating to the case, (the burden to supply all information necessary for a clear understanding of the case shall be upon the Petitioner);
  - d. each remonstrating party shall have the opportunity to present facts relating to the case for their presentations;
  - e. the Chairperson shall then recognize other interested parties for their presentations;
  - f. the Petitioner shall then present rebuttal;
  - g. the Board members and Planning Director may direct questions to any of the previous speakers, with the Board having unlimited time to consider the facts of the matter;
  - h. the staff may present a recommendation for specific action to be taken by the Board;
  - i. the Chairperson shall call for a discussion by the Board members;
  - j. the Chairperson shall call for a motion. A motion shall be made and seconded, and a vote of the Board shall occur. Any Board member or the staff may ask for discussion to occur after the motion and before the vote for the purpose of clarifying the motion. No petitioner or other interested party may participate in this discussion.

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## Article Six

# Final Disposition of Petitions

### 6.1 Indecisive Vote:

When a motion of the Board fails to receive a majority vote (either in favor or against), and therefore does not result in an official action of the Board, the matter shall be automatically continued, re-docketed and heard again at the next regularly scheduled meeting of the Board.

### 6.2 Dismissal of Petitions:

The Board may dismiss an petition for lack of action or for lack of jurisdiction. Any petition which has been dismissed by the Board for lack of action shall not be re-filed for consideration by the Board within a period of 1 year from the date of the dismissal, unless a majority vote of the Board grants a request from the petitioner to allow an earlier re-filing of the petition.

### 6.3 Withdrawal of Petitions:

No petition may be withdrawn by the petitioner after a vote has been ordered by the Chairperson. No petition which has been withdrawn by the petitioner shall again be filed for consideration by the Board within a period of 6 months from the date of withdrawal. A majority vote of the Board may grant a request from the petitioner to allow an earlier re-filing of the petition.

### 6.4 Refiling Following Adverse Decisions:

Any petition which was denied by the Board shall not be reheard by the Board for the time period specified by the Madison County Zoning Ordinance. However, the Board may allow any such petition to be reheard before the expiration of the waiting period if both of the following conditions are met: (1) a majority of the entire membership of the Board votes in favor of rehearing the petition at a subsequent meeting of the Board, and (2) the petition is filed and considered pursuant to all of the other provisions of these Rules and Procedures.

### 6.5 Findings of Fact:

The Board shall enter written Findings of Fact into the record in support of its decision on all petitions. The Board shall list the Findings of Fact for each petition into the record orally at the time a determination is made on each petition. The required Findings of Fact shall be based upon the decision criteria provided by the Madison County Zoning Ordinance and the applicable requirements of Indiana law.

### 6.6 Notice of Action Taken:

Following the Board's action on a petition the staff shall notify the petitioner of the Board's decision and the Findings of Fact in writing.

- A. For all petitions which are approved, the notice shall include the date of approval, a listing of the Findings of Fact, and a listing of any conditions made or commitments accepted as part of the approval.
- B. For petitions which are denied, the notice shall include the date of denial and a listing of the Findings of Fact.
- C. For all petitions with are continued, the letter shall include the date of the meeting at which the continuance was determined, the reasons for the continuance, the date at which the petition will be heard, and whether or not re-notification is required.

### 6.7 Review by Certiorari

In accordance with IC 36-7-4-1003, each decision of the Board is subject to review by certiorari. Any person aggrieved by a decision of the Board may present, to the circuit or superior court of Madison County, a verified petition asserting that the Board's decision is illegal in whole or in part and specifying the grounds of the illegality. Any such petition must be submitted to the court within 30 days of the decision by the Board.

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Article Seven

## Amendments and Suspensions

**7.1 Amendments:**

These Rules and Procedures may be amended by a three-fifths (3/5) vote of the membership of the Board.

**7.2 Suspensions:**

These Rules and Procedures or any portion of them may be suspended by a four-fifths (4/5) vote of the membership of the Board. No suspension shall continue beyond the adjournment of the meeting at which the motion to suspend was passed.

**7.3 Effective Date:**

These rules shall enter into effect immediately upon the adoption of this Resolution.

**7.4 Federal and State Law:**

Notwithstanding any other provisions of these Rules and Procedures, nothing shall require the Board to observe any other act, or do any other thing, in contravention of any applicable Federal or state law. These Rules and Procedures shall be construed in accordance with the laws of the State of Indiana.

**7.5 Severability:**

Should any provision of these Rules and Procedures be void or unenforceable such provision shall be deemed omitted, and these Rules and Procedures, with such provisions omitted, shall remain in effect.

These Rules and Procedures are hereby adopted on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
by the Madison County, Indiana Advisory Board of Zoning Appeals.

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Secretary